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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,472	08/30/2001	Daryle Lee Petersen	11738.00015	3236

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EXAMINER

WILLIAMS, CATHERINE SERKE

ART UNIT PAPER NUMBER

3763

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DATE MAILED: 03/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/945,472

Applicant(s)

PETERSEN, DARYLE LEE

Examiner

Catherine S. Williams

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2,3,10-12,17-21,23-36 and 44-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,3,10-12,17-21,23-36 and 44-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Ward (US Pat#s 5,713,923 and 5,978,702). Ward discloses techniques of treating epilepsy that include identifying the site, selecting at least one or two catheters (4:42-45; 4:49-51) with a microporous section (27-29), placing the catheters in the organism, coupling the catheters to a pump (10), and actuating the pump. See figures 1 and 6. Each end of the microporous sections is connected to an end of a solid catheter section. See figure 6. This results in a continuous cross section through any part of the distal region. The sold tube may be made from a radiopaque material. The pump may be implantable (4:40-42; 4:46-48) or external (before it is implanted). A manifold (connector at the top of the head in figure 1) connects the pump to the one or two catheters. This connector inherently has entrance and exit openings as the only way for the system to work as disclosed. As shown in figure 6 the microporous membrane sections have first and second ends that are coupled to the solid sections.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 10-12 and 23-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of Deniega. Ward meets the claim language as described above but fails to include a solid catheter tip.

However, Deniega teaches such a tip (48). See figure 1-4. This tip is part of a design that allows for uniform delivery of fluid throughout an anatomical region.

At the time of the invention, it would have been obvious to substitute the catheter of Deniega for the catheter of Ward. Both inventions are analogous in the art and therefore a combination is proper. Additionally, the motivation for the substitution would have been in order to provide a catheter with enhanced flow characteristics for better uptake into to the body region.

Claims 27, 31-36 and 44-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward in view of Deniega.

Ward meets the claim limitations as described above but fails to include the outer tubular wall having at least one opening through to the inner tubular wall where the inner tubular wall is lined with a microporous membrane. Ward also fails to teach a microporous member having an outer area and an inner area and having an interference fit with the inner tubular wall.

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Deniega teaches a catheter with these limitations, as shown in the embodiment of figure 6. Furthermore, the device of Deniega is constructed to enable uniform delivery of medication.

At the time of the invention, it would have been obvious to substitute the catheter of Ward with the catheter of figure 6 of Deniega. Both inventions, specifically the catheters, are analogous in the art and therefore a combination is proper. Additionally, the motivation for the substitution would have been in order to provide a catheter with enhanced flow characteristics for better uptake into to the body region.

### *Response to Arguments*

Applicant's arguments filed 12/29/03 have been fully considered but they are not persuasive. Specifically, applicant argues that neither Ward patents disclose "the microporous membrane section comprising, a first end and a second end, the first end and the second end coupled to the solid sections. Attention is drawn to figure 6 which shows the microporous membrane sections between solid sections along the longitudinal axis of the catheter. As shown, the outer diameter of the catheter is continuous along this length. If the catheter is supposed to function as described the microporous membrane sections must, in some way, be coupled to the solid sections. If the microporous section are not coupled to the solid sections then fluid would flow not only from the microporous section but from between the junction of the membrane and solid sections. This is contrary to the overall teaching of the prior art which states that an objective of the invention it to provide uniform flow from the catheter. These sections must be coupled for uniform flow.

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The manifold was inadvertently omitted from the previous office action. The present rejection above indicates which structure in the prior art reads on the manifold.

Applicant's arguments with respect to claim 27 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine S. Williams whose telephone number is 703-308-4846. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Catherine S. Williams *CSW*  
March 22, 2004

  
**BRIAN L. CASLER**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700